

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 829 The John M. McKay Scholarships for Students with Disabilities Program  
**SPONSOR(S):** PreK-12 Innovation Subcommittee; Plasencia and Ponder  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) PreK-12 Innovation Subcommittee	12 Y, 0 N, As CS	Dehmer	Healy
2) PreK-12 Appropriations Subcommittee			
3) Education Committee			

### SUMMARY ANALYSIS

The McKay Scholarship for Students with Disabilities Program (McKay Scholarship) provides scholarships for eligible students with disabilities to attend a public or private school of their choice. A student with a disability may receive a McKay Scholarship to attend a public or private school if he or she has an Individual Education Plan (IEP) or a 504 Accommodation Plan (504 Plan) and:

- received specialized instructional services under the Voluntary Prekindergarten Education Program during the previous school year; or
- spent the *prior school year in attendance* at a Florida public school or the Florida School for the Deaf and the Blind.

The term “prior school year in attendance” means the student was enrolled and reported by a school district for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12.

The bill extends McKay Scholarship eligibility to students who receive a written diagnosis of a qualifying disability from a licensed physician or psychologist and to students who are enrolled and counted for funding in a public school’s October or February FEFP survey immediately prior to participation, instead of enrollment for an entire school year.

The bill also requires parents to provide school districts with documentation of a physician’s diagnosis of a student’s disability and requires school districts to notify the Department of Education of receipt of the diagnosis when the parent requests a McKay Scholarship from the school district.

See fiscal comments.

The bill takes effect July 1, 2018.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

The McKay Scholarship for Students with Disabilities Program (McKay Scholarship) provides scholarships for eligible students with disabilities to attend a public or private school of their choice. Students with disabilities include K-12 students who are documented as having an intellectual disability; a speech impairment; a language impairment; a hearing impairment, including deafness; a visual impairment, including blindness; a dual sensory impairment; an orthopedic impairment; an other health impairment; an emotional or behavioral disability; a specific learning disability, including but not limited to, dyslexia, dyscalculia, or developmental aphasia; a traumatic brain injury; a developmental delay or autism spectrum disorder.<sup>1</sup>

A student with a disability may receive a McKay Scholarship to attend a public or private school if he or she has an Individual Educational Plan (IEP) or a 504 Accommodation Plan (504 plan)<sup>2</sup> and:

- received specialized instructional services under the Voluntary Prekindergarten Education Program<sup>3</sup> during the previous school year; or
- spent the *prior school year in attendance* at a Florida public school or the Florida School for the Deaf and the Blind.<sup>4</sup>

For purposes of scholarship eligibility, the term “prior school year in attendance” means the student was enrolled and reported by:

- a school district for funding during the preceding October and February Florida Education Finance Program (FEFP) surveys in kindergarten through grade 12, which includes time spent in a Department of Juvenile Justice commitment program if funded under the FEFP;
- the Florida School for the Deaf and the Blind during the preceding October and February student membership surveys in kindergarten through grade 12; or
- a school district for funding during the preceding October and February FEFP surveys and the student was at least four years old when enrolled and reported and eligible for services under the school attendance requirements for prekindergarten aged children with disabilities.<sup>5</sup>

The parent of an eligible student with disabilities may choose from several options including:

- attendance at another public school within the school district;<sup>6</sup>
- attendance at an eligible public school in an adjacent school district that has space and provides the services identified in the student’s IEP<sup>7</sup> or 504 Plan;<sup>8</sup> or

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<sup>1</sup> Section 1002.39(1), F.S.

<sup>2</sup> A student’s 504 plan must be at least six months in duration in order for the student to be eligible for a scholarship. Rule 6A-6.0970(1)(b)3.a., F.S.

<sup>3</sup> A child who has a disability is eligible for specialized instructional services if the child is eligible for the VPK Program and has a current IEP developed by the district school board. Section 1002.66, F.S.; *see also* s. 1002.53, F.S.

<sup>4</sup> Section 1002.39(2)(a), F.S.

<sup>5</sup> Section 1002.39(2)(a)2., F.S. Although not required to attend a public school, children with disabilities who attain the age of three years are eligible for admission to public special education programs and related services. Section 1003.21(1)(e), F.S.

<sup>6</sup> Section 1002.39(5)(a)1., F.S.; rule 6A-6.0970(2), F.A.C.

<sup>7</sup> An IEP is developed for students with disabilities ages three through 21. The IEP team must include the parent; at least one Exceptional Student Education (ESE) teacher of the child; at least one general education teacher of the child; a representative of the school district, and when appropriate, the student with the disability. The IEP team develops annual goals, both academic and functional, for the student based on his or her strengths, needs, and the effect of the disability. Once the goals are determined, the team decides what type of special education services and supplementary aids the student needs and how often and where the services should be provided, e.g., in the general education class or in the ESE classroom. 34 C.F.R. s. 300.320 and .321; rule 6A-6.03028(3), F.A.C.

<sup>8</sup> Section 1002.39(5)(e), F.S.; rule 6A-6.0970(2), F.A.C. A 504 Plan is formulated by a team of parents, teachers, and other staff members for a student identified as an individual with a disability under the Rehabilitation Act. The Rehabilitation Act does not list

- attendance at an eligible private, sectarian or nonsectarian school.<sup>9</sup>

The student's parent must file a notice of intent with the Department of Education (DOE) by completing an online application using DOE's website. If the parent chooses the private school option, the notice must be filed prior to withdrawing the student from public school. Once a completed notice has been filed, the parent will receive immediate online confirmation, which includes a notice of potential eligibility or ineligibility. If a student is deemed ineligible to participate, the reason for the ineligibility and instructions for contacting the school district to address the ineligibility will be provided.<sup>10</sup>

### **Effect of Proposed Changes**

The bill extends McKay Scholarship eligibility to students who receive a written diagnosis of a qualifying disability from a licensed physician or psychologist and to students who are enrolled and counted for funding in a public school's October or February FEFP survey immediately prior to participation, instead of enrollment for an entire school year.

The bill also requires parents to provide school districts with documentation of a physician's diagnosis of a student's disability and requires school districts to notify the DOE of receipt of the diagnosis when the parent requests a McKay Scholarship from the school district.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 1002.39, F.S. relating to the John M. McKay Scholarship Program.

**Section 2.** Provides an effective date of July 1, 2018.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

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specific illnesses due to the difficulty of creating an all-inclusive list of impairments. The Act defines disability as any physical or mental impairment that "substantially limits one or more major life activities." The 504 Plan provides a description of the accommodations that the school will provide a student. Generally, a student with a 504 Plan does not have an IEP or a matrix of services. Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 355; Florida Department of Education, *A Parent and Teacher Guide to Section 504: Frequently Asked Questions*, [www.fldoe.org/core/fileparse.php/7690/urlt/0070055-504bro.pdf](http://www.fldoe.org/core/fileparse.php/7690/urlt/0070055-504bro.pdf) (last visited January 19, 2018).

<sup>9</sup> Section 1002.39(2) and (8), F.S.

<sup>10</sup> Section 1002.39(1), F.S.; rule 6A-6.0970(1)(a), F.A.C.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Current law allows a parent of a student with a disability to request and receive a McKay Scholarship funded with the student's proportionate share of the FEFP, if the student has spent the prior school year in attendance at a Florida public school or the Florida School for the Deaf and the Blind. Prior year in attendance means that the student was enrolled and reported for funding during the preceding October and February FEFP surveys. The proposed policy change would modify this eligibility requirement and remove the prior school year in attendance requirement and replace this with being enrolled and reported for funding in the October or February FEFP survey. The effect of this proposed change would be that the student would not be included in the enrollment forecast estimate and would not have been funded in the FEFP. The net impact to the FEFP could potentially be a reduced amount of funds per public school student.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the PreK-12 Innovation Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differs from the bill by:

- extending McKay Scholarship eligibility to students who are enrolled and counted for funding in the October or February FEFP survey immediately prior to participation, instead of enrollment for an entire school year or exempting students in grades K-5 from such requirements;
- requiring parents to provide school districts with documentation of a physician's diagnosis of a student's disability; and
- requiring school districts to notify the DOE of receipt of the diagnosis when the parent requests a McKay Scholarship from the school district.

The bill analysis is drafted to the PCS as passed by the PreK-12 Innovation Subcommittee.